



FORT SILL LEGAL ASSISTANCE

NCOER/OER/AER APPEALS



That “bad” NCOER got you down? That less than stellar OER keeping you up at night? That AER just doesn’t seem right? Well, thankfully, AR 623-3 and DA Pam 623-3 governs all evaluation reports. Everything you need to determine if that evaluation report was done correctly is covered in the regulations.

AR 623-3 and AR 15-185 provide the three possible methods of redress for a perceived possible “illegal” or “incorrect” NCOER, OER, or AER. The Army’s redress program is based upon principles structured to prevent and/or provide a remedy for alleged injustices or regulatory violations, as well as to correct them once they have occurred. OERs, NCOERs, and AERs may have administrative errors or may not accurately record the individual’s potential or the manner in which he or she performed his or her duties.

The three options of redress are:

- 1) The Commander’s Inquiry. Commanders are required to look into alleged errors, injustices, and illegalities in evaluation reports, which may be brought to the Commander’s attention by the rated individual or anyone authorized access to the report. (AR 623-3, Chapter 4, Section II).
- 2) The Appeals System. Appealing an evaluation report based upon an administrative and/or substantive basis. (AR 623-3, Chapter 4, Section III).
- 3) Army Board for Correction of Military Records (ABCMR) Appeals. File an ABCMR appeal in accordance with AR 15-185.

It is imperative that erroneous reports be corrected as soon as possible. As time passes, people forget and documents and key personnel are less available. Consequently, preparation of a successful appeal becomes more difficult. Substantive appeals must be submitted within three years of the evaluation thru date. Failure to submit an appeal within this time will require the appellant to submit his or her appeal to the ABCMR. Administrative appeals will be considered regardless of the period of the report and a decision will be made based on the regulation in effect at the time the report was rendered. However, the likelihood of successfully appealing a report diminishes with the passage of time. Therefore, prompt submission is strongly recommended.

If you have been given an evaluation report that you do not agree with, you should first objectively decide if the report is inaccurate, or in violation of the intent of the regulation. If so, decide whether the report runs the risk of causing you to suffer an injustice.

If the report will cause injustice, then you can request a Commander's Inquiry into the report.

A Commander's Inquiry requires Commanders to look into alleged errors, injustices, and illegalities in evaluation reports, which may be brought to the Commander's attention by the rated individual or anyone authorized access to the report. The primary purpose of the Commander's Inquiry is to provide a greater degree of command involvement in preventing obvious injustices to the rated individual and correcting errors before they become a matter of permanent record. A secondary purpose of the Commander's Inquiry is to obtain command involvement in clarifying errors or injustices after the evaluation report is accepted at Headquarters, Department of the Army (HQDA). However, in these after-the-fact cases, the Commander's Inquiry is not intended to be a substitute for the appeals process, which is the primary means of addressing errors and injustices after they have become a matter of permanent record. Who performs the inquiry? The Commander's Inquiry is performed by a Commander in the chain of command above the designated rating officials involved in the allegations.

Though a Commander's Inquiry is not required to be completed prior to submitting an appeal, the results of a Commander's Inquiry can be submitted with the appeal request as additional evidence.

The rated Soldier or other interested parties, as listed in AR 623-3 section 4-7, may appeal any report that is believed to be incorrect, inaccurate, or in violation of the intent of the regulation. What do I need to submit with my appeal? An evaluation report accepted for inclusion in a Soldier's OMPF is presumed to be administratively correct. Appeals supported by statements from rating officials claiming administrative oversight or typographical errors will normally be returned without action unless accompanied by additional substantiating evidence such as the published rating chain, orders, leave records, hospitalization records, human resource documents, or the results of a Commander's Inquiry.

An appeal must be substantiated by clear and convincing evidence.

The burden of proof rests with the appellant to produce evidence that establishes, clearly and convincingly, that—(1) the presumption of regularity should not be applied to the report under consideration and (2) action is warranted to correct a material error, inaccuracy, or injustice. Clear and convincing evidence must be of a strong and compelling nature, not merely proof of the possibility of administrative error or factual inaccuracy. For claims of administrative error, appropriate evidence may include the published rating chain, orders, leave records, human resource documents, etc. For claims of substantive error, such as inaccuracy or injustice, evidence must include statements from third parties, rating officials or other documents from official sources. Third parties are persons other than the Soldier or rating officials who have knowledge of the rated Soldier's performance during the rating period. Such statements are afforded more weight if they are from persons who served in positions affording them good opportunity to observe, firsthand, the rated Soldier's performance as well as interactions with rating officials. Statements from rating officials are also acceptable if

they relate to allegations of factual errors, erroneous perceptions, or claims of bias. To the extent practical, such statements should include specific details of events or circumstances leading to inaccuracies, misrepresentations, or injustice at the time the report was rendered. Remember, the results of a Commander's Inquiry may provide support for an appeal request.

There are only two grounds for an appeal; administrative error or substantive error.

Appeals based solely on administrative error will be adjudicated by various agencies depending on the appellant's military status. Administrative errors include deviation from the established rating chain, insufficient period of observation by the rating officials, errors in the report period, and errors in the height/weight. Bear in mind that the rated Soldier's signature verifies administrative data on the report and also verifies that he or she has seen a completed evaluation report. Correction of minor administrative errors seldom serves as a basis to invalidate an evaluation report. Removal of a report for administrative reasons will be allowed only when retention of the report would clearly result in an injustice to the Soldier. Appeals based solely on the lack of full compliance with performance counseling requirements will rarely invalidate an evaluation report unless accompanied by additional evidence of inaccuracy or injustice.

Appeals alleging bias, prejudice, inaccurate, or unjust ratings, or any matter other than administrative error are substantive and will be adjudicated by the Army Special Review Board (ASRB). After resolution of the appeal, the reviewing agency amends the Soldier's official records, if appropriate. If the Soldier has been nonselected for promotion, the ASRB will also determine if promotion reconsideration is warranted as a result of the change to the evaluation report.

Before deciding whether to appeal, the prospective appellant must analyze his or her own case dispassionately. The prospective appellant should take note that pleas for relief citing past or subsequent performance or assumed future value to the Army are rarely successful and that statements from people who observed the appellant's performance before or after the period in question (unless performing the same duty in the same unit under similar circumstances), letters of commendation or appreciation for specific but unrelated instances of outstanding performance, citations for awards, inclusive of the same period will be of little help when determining if an injustice has been committed against the appellant.

AR 623-3 provides sample appeal formats and lists the appropriate agency addresses for submitting the appeal. If you feel your NCOER, OER, or AER, was done in violation of the regulation, or if you just have questions, feel free to contact a legal assistance attorney for further assistance.

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If you have questions concerning the information in this fact sheet, please call the Legal Assistance Office (580) 442-5058 or (580) 442-5059. Our hours of operation are Monday, Tuesday, Wednesday and Friday, 0900 – 1600, and Thursdays 1300-1600. The Fort Sill Legal Assistance Office is located on the 4th floor of Building 4700, Hartell Hall (Welcome Center) on Mow-Way Road.